

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ERIC WHITNEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO. CIV-09-55-D
	)	
JUSTIN JONES, ODOC DIRECTOR,	)	
	)	
Respondent.	)	

**O R D E R**

Petitioner, a state prisoner appearing *pro se*, brought this action for habeas relief; he contends that Respondent improperly utilized his record of escape from incarceration to restrict Petitioner's credit level. Because he challenges the execution of his sentence, the action is properly analyzed pursuant to 28 U. S. C. § 2241.

In accordance with 28 U. S. C. § 636(b)(1)(B) and (C), the matter was referred to United States Magistrate Robert E. Bacharach for initial proceedings. Respondent filed a Motion to Dismiss [Doc. No. 7], arguing that Petitioner had not exhausted the available administrative remedies applicable to his complaint as set forth in a grievance procedure; Petitioner timely responded. The Magistrate Judge then filed a Report and Recommendation [Doc. No. 10] in which he recommended that the Motion to Dismiss be granted and that the action be dismissed without prejudice to its refiling. Because Petitioner timely objected to the Report and Recommendation, the matter is reviewed *de novo*.

In the Report and Recommendation, the Magistrate Judge correctly noted that Petitioner was required to exhaust available administrative remedies prior to seeking federal habeas relief on his claim. *See Hamm v. Saffle*, 300 F. 3d 1213, 1216 (10<sup>th</sup> Cir. 2002). The Magistrate Judge then

discussed in detail the grievance procedure established by the Oklahoma Department of Corrections, explaining the steps required to complete that process; he then detailed the actions taken by Petitioner with respect to his complaint, and concluded that the evidence in the record establishes that Petitioner did not exhaust the remedies available to him prior to filing this action.

The Court has reviewed the record and the arguments of both Respondent and Petitioner, and concludes that the Magistrate Judge's factual conclusions are correct in light of the governing law. The Magistrate Judge's factual findings and legal analysis need not be repeated, and are adopted as though set forth herein.

In his objection to the Report and Recommendation, Petitioner asserts the same arguments presented in opposition to the Motion to Dismiss. Those arguments were considered and rejected by the Magistrate Judge. Petitioner's objections do not present argument or authority warranting this Court's rejection of the Magistrate Judge's recommendation.

Having reviewed the matter *de novo*, the Court finds that the Magistrate Judge's findings and conclusions are correct; accordingly, the Report and Recommendation [Doc. No. 10] is adopted. Respondent's Motion to Dismiss [Doc. No. 7] is GRANTED. This action is dismissed without prejudice to its refiling after Petitioner has fully exhausted his state administrative and judicial remedies.

IT IS SO ORDERED this 31<sup>st</sup> day of August, 2009.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE